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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 06-72473
Agency Nos. A070-971-660
A070-971-661

[Filed July 31, 2009]

SANG KYU HAN; SEONG SOON HAN,)
)
Petitioners,)
)
v.)
)
ERIC H. HOLDER Jr., Attorney General,)
)
Respondent.)

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Sang Kyu Han and his wife, natives and citizens of South Korea, petition for review of the Board of Immigration Appeals' order dismissing their appeal from an immigration judge's order of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

We reject petitioners' contention that the government failed to establish removability by clear and convincing evidence, because petitioners conceded removability. *See Shin v. Mukasey*, 547 F.3d 1019, 1024 (9th Cir. 2008).

We also reject petitioners' contention that the government should be equitably estopped from ordering their removal. Although a government employee, Leland Sustaire, issued petitioners' fraudulent alien registration cards, the record shows petitioners were not "ignorant of the true facts" when they procured the cards, *id.* at 1025, and "[i]n any event, estoppel against the government is unavailable where petitioners have not lost any rights to which they were entitled," *Sulit v. Schiltgen*, 213 F.3d 449, 454 (9th Cir. 2000).

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Finally, we find no defects amounting to a due process violation. *See Shin*, 547 F.3d at 1024-25; *Hong v. Mukasey*, 518 F.3d 1030, 1035-36 (9th Cir. 2008).

PETITION FOR REVIEW DENIED.

APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: A70 971 660 - San Francisco
A70 971 661

Date: MAY 04 2006

In re: SANG KYU HAN
SEONG SOON HAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Alex C. Park, Esquire

ON BEHALF OF DHS: Michael D. Steinberg
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section

212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] - Fraud or willful misrepresentation of a material fact (both respondents)(withdrawn)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)]- Inadmissible at time of entry or adjustment of status under section 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document (both respondents)

Sec. 237(a)(1)(C)(i), I&N Act [8 U.S.C. § 1227(a)(1)(C)(i)] - Nonimmigrant - violated conditions of status (both respondents)

APPLICATION: Termination

ORDER:

PER CURIAM. The respondents, a husband and wife, have appealed from the Immigration Judge's decision dated June 24, 2005.

This case stems from the illegal actions of a Department of Homeland Security (DHS) employee, who engaged in a criminal conspiracy to grant lawful status to aliens not otherwise eligible to adjust their status (I.J. at 1-2; Exhs. 2-5). The respondents in this matter conceded removability for having been

inadmissable at the time of entry or adjustment of status under section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), because they were not in possession of valid immigrant visas or entry documents, and withdrew all applications for relief (Tr. at 17-18).

Because the respondents conceded removability, we reject their arguments on appeal that the DHS has not sustained its burden of proof regarding the charge, including the arguments that their Due Process rights were violated by the DHS's failure to link the DHS employee's fraud to the respondents. We also independently find that the Immigration Judge correctly sustained the charge of removability for lack of possession of valid entry documents based upon clear and convincing evidence. *See* section 240(c)(3) of the Immigration and Nationality Act 8 U.S.C. § 1229a(c)(3).

The respondents also argue that the Immigration Judge erred because there is no link between the respondents and the DHS employee's fraud. We note, however, that the DHS withdrew the fraud charge against the respondents and such a link is not required to establish that the respondents were not in possession of the requisite documents under section 212(a)(7)(A)(i)(I) of the Act, particularly where the respondents have conceded removability.

The respondents' remaining arguments are essentially a request for equitable estoppel against the DHS, in which they contend that, because a DHS employee conferred lawful status upon them, they should be entitled to retain that status. We reject this argument. The United States Circuit Court of Appeals

for the Ninth Circuit, under whose jurisdiction this case arises, has agreed with this Board's conclusion that we have no jurisdiction over claims of equitable estoppel *See Chang v. United States*, 327 F.3d 911, 924 (9th Cir. 2003) (*citing Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991)). Further, the Ninth Circuit has held that "estoppel cannot be invoked against the government because of the unauthorized acts of its agents." *Saulque v. United States*, 663 F.2d 968, 976 (9th Cir. 1981) (internal citation omitted). Therefore, even were we empowered to adjudicate claims of equitable estoppel, no valid claim would lie where, here the DHS employee committed criminal acts, and thus behaved well beyond his valid authority. The respondents have not ordered any other appellate argument warranting a reversal of the Immigration Judge's order of removal.

/s/
FOR THE BOARD

APPENDIX C

IMMIGRATION COURT
550 KEARNY ST., SUITE 800
SAN FRANCISCO, CA 94106

In the Matter of: Case: A70 971 660
Respondent IN REMOVAL PROCEEDINGS

Sang Kyu Han

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 6/24/05. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[✓] The respondent was ordered removed from the United States to South Korea.

* * *

Appeal waived Reserved (A) / I / B
Appeal due by: 7/25/05

/s/
Anthony S. Murry
Immigration Judge

Date: 6/24/05

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [✓] PERSONAL SERVICE [ ]

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] ALIEN'S ATTY/REP [✓] INS-

DATE: 6/27/05 BY: COURT STAFF Ne

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ]

0009f/825/akl

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
San Francisco, California

June 24, 2005

File No.: A 70 971 660
A 70 971 661

In the Matter of)
)
SANG KYU HAN)
SEONG SOON HAN)
)
Respondents)

IN REMOVAL PROCEEDINGS

CHARGE: Section 237 (a) (1) (A) - Alien not in possession of valid documents.

APPLICATION: None.

ON BEHALF OF RESPONDENTS:
Alex Park

ON BEHALF OF SERVICE:

ORAL DECISION OF THE IMMIGRATION JUDGE

The two respondents in these connected cases are natives and citizens of South Korea.

This is one of a number of so-called Sustaire cases in which these respondents, as well as many other people, received green cards that were fraudulently issued as part of a criminal conspiracy entered into by former INS employee Leland Sustaire.

The respondents have admitted all of the factual allegations of the Notice to Appear and conceded the sole charge of removability. In substance, based on the extensive documentary record that was submitted by the parties and on which the case was submitted, The respondents acknowledge, as they should based on the evidence, that the green cards in their possession at this time were not validly issued do not confer upon them lawful pemanent resident status.

Mr. Sustaire entered into a conspiracy with a group of individuals who were Korean-American. His coconspirators persuaded individuals such as the respondent that green cards could be obtained by the payment of fees for lawyers and other processing and clerical matters. In reality, Mr. Sustaire and the coconspirators took the money paid by people, such as the respondents, and split it among themselves. And these funds were, in fact, bribes to Mr. Sustaire who then misused his authority as an INS officer to cause the issuance of facially valid green cards. Mr. Sustaire, however, did not perform background checks, conduct interviews or have the required documentation for the issuance of the green cards.

Mr. Sustaire has been convicted for his criminal activity, as have all his coconspirators. Nevertheless, the green cards that he issued are not valid green cards. And, as noted above, the respondents do not dispute this fact.

Because the respondents are not in possession of valid Immigration documents and have not made application for any relief, the charge of removability must be sustained. the rspondents have asserted that the Government should be estopped from removing them because Mr. Sustaire, during the vast majority of time the conspiracy was in operation, was a Government employee and the Government, therefore, has unclean hands. Estoppel, however, is an equitable doctrine, and this administrative tribunal does not have general equity power and no jurisdiction and no authority, as far as the Court is aware, to estop the Government. This issue is, however, preserved for appeal.

Based on the entire record, the order in both cases will be that the respondents are ordered removed to South Korea.

Appeal is reserved for both respondents.

/s/
ANTHONY S. MURRY
Immigration Judge

RECEIVED
DEPARTMENT OF JUSTICE

JAN 13 2006

EXECUTIVE OFFICE
IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE ANTHONY MURRY, in the matter of:

SANG KYU KAN
SEONG SOON HAN

A 70 971 660
A 70 971 661

San Francisco, California

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/
Judith Moore, Transcriber

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December 23, 2005
(completion date)

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APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-72473
Agency Nos. A070-971-660
A070-971-661

[Filed November 25, 2009]

SANG KYU HAN; SEONG SOON HAN,	)
	)
Petitioners,	)
	)
v.	)
	)
ERIC H. HOLDER Jr., Attorney General,	)
	)
Respondent.	)
	)

ORDER

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Petitioners' petition for panel rehearing is denied.